

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

CHRISTOPHER WHITE,

Petitioner,

vs.

JAMES SALMONSEN; ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondents.

CV 19-05-H-BMM-JTJ

**ORDER ADOPTING MAGISTRATE
JUDGE'S FINDINGS AND
RECOMMENDATIONS**

Petitioner Christopher White is a state prisoner proceeding pro se. White filed a petition seeking a writ of habeas corpus under 28 U.S.C. §2254 on January 7, 2019. (Doc. 1.) White is currently serving a 4-year custodial sentence. (Doc. 1 at 2-3.)

White reported an incident to Montana State Prison officials. White believed a Montana State Prison member violated provisions of the Prison Rape Elimination Act. White alleges that Montana State Prison staff retaliated by unlawfully writing

White up for allegedly allowing another inmate to use his phone account. White asks the Court to protect him from further harmful acts by Montana State Prison staff.

Magistrate Judge John Johnston issued Findings and Recommendations in this matter on February 1, 2019. (Doc. 6.) Judge Johnston determined that habeas corpus relief was not available because White's claim constitutes a challenge to conditions of his confinement rather than the fact or duration of his confinement. Judge Johnston further determined that White had not yet exhausted his remedies available in the Montana state court system.

Judge Johnston recommended that White's petition be denied because White has not yet exhausted his state court remedies. Judge Johnston noted that White may return to this Court if and when he fully exhausts the claim. Judge Johnston further recommended that a certificate of appealability be denied. Neither party objected to Judge Johnston's Findings and Recommendations.

The Court has reviewed Judge Johnston's Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Johnston's Findings and Recommendations.

IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 6), are **ADOPTED IN FULL**. White's Petition, (Doc. 1), is **DISMISSED** without prejudice as unexhausted.

IT IS FURTHER ORDERED that the Clerk of Court is directed to enter, by separate document, a judgment in favor of Respondent and against Petitioner.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

DATED this 27th day of February, 2019.



Brian Morris
United States District Court Judge

